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Insurance - Policy Payable to Wife - Effect of Property Settlements

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issue presented in the instant case, it has considered three related problems. In one case,[44] the court found an ineffective waiver because of the "unconscionable haste" with which the nineteen year old defendant was sentenced for murder.[45] An effective waiver was found however, where an eighteen year old claimed his plea of guilty had been influenced by promises of a lighter sentence.[46] In *State v. Jackman*,[47] the most recent case considered by the court in this area, it found an effective waiver because of the defendant's prior experience with criminal proceedings even though the twenty year old defendant claimed he thought he was waiving counsel in juvenile and not criminal proceedings. The intimation from these decisions, particularly the *Jackman* decision,[48] is that when the issue is presented to the court it will follow the more favorable majority view set out herein rather than base its decision solely on the age of the defendant.

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INSURANCE—POLICY PAYABLE TO WIFE—EFFECT OF PROPERTY SETTLEMENTS—Under a property settlement agreement the wife was to transfer and release any and all interest in certain policies on her divorced husband's life in which she was the named beneficiary. The agreement further provided that the insured was given the right to designate beneficiaries and to exclude the wife if he so desired. The insured made no attempt to change the beneficiary and died six months after the final divorce decree. The Supreme Court of Arkansas, three justices dissenting, *held* that the divorced wife was foreclosed to claim any interest in or proceeds from the policies in light of the specific transfer to the decedent. The dissenting justices reasoned that the provision in the settlement providing for a change of beneficiary "if the insured so desired," should be given effect when considered with his inaction, and that this clearly indicated a desire not to exclude the divorced wife as named beneficiary. *Brewer v. Brewer*, 390 S.W.2d 630 (Ark. 1965).

This case exemplifies one of the problems with which the courts have struggled when determining the effect of property settlement agreements on the right to proceeds of a life insurance policy. Although not considered in most cases, there is some con-

44. State v. Magrum, 76 N.D. 527, 38 N.W.2d 358 (1949).
45. Note that under our classification this decision really involves a finding that the defendant was not advised of his right to have counsel; see *supra* note 7.
46. State *ex rel* Johnson v. Broderick, 75 N.D. 340, 27 N.W.2d 849 (1947).
47. 93 N.W.2d 425 (N.D. 1958).
48. See, *Id* at 429.

cern as to whether allowing such an agreement to effect a change of beneficiary would be doing so in a mode not authorized by the insurer.[1] Most of the decisions have disregarded this aspect, however, and have determined the rights of the parties involved on the basis of other considerations.[2]

Early cases held that divorce alone did not terminate the named beneficiary's interest in the proceeds of an insurance policy on the divorced spouse's life.[3] In the absence of statute, such is the general rule at present.[4] Those courts considering the effect of property settlement agreements on the right to proceeds have taken divergent views, however, by considering the position of the particular parties involved. Some courts have held that the named beneficiary does not give up her right to proceeds by entering into such an agreement,[5] while others have held that the right to proceeds is lost by any provision in which the named beneficiary waives her rights to the husband's property.[6] Another line of decisions takes the position that whether or not the named beneficiary loses her interest, depends on the language of the property settlement or the particular facts of the case.[7]

The instant case, by adopting the view that a specific release of the policies should foreclose the wife's interest, is concurring in the result of the better reasoned decisions holding that the particular language of the property settlement, as well as the circumstances of the parties, should be considered.[8] Although the instant case reaches an equitable result, the majority rely on rather weak authority within their own jurisdiction[9] and cite none of the cases arising elsewhere. It should be noted that Arkansas allows a change of beneficiary by testamentary provision.[10] This was relied on in deciding an earlier case involving the named beneficiary's right to proceeds,[11] which case is in part the basis of the court's decision here.

Those jurisdictions having statutory provisions regarding the

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1. *E.g.*, John Hancock Mut. Life Ins. Co. v. Dawson, 278 S.W.2d 57 (Mo. App. 1955).
2. *E.g.*, Aetna Life Ins. Co. v. Bushnell, 190 F. Supp. 499 (D Wyo. 1960) (Court reasoned that requirements for changing beneficiary come into play only when there are acts toward changing beneficiary); Western & So. Life Ins. Co. v. Hague, 74 Ohio L. Abs. 259, 140 N.E.2d 89 (C.P. 1956) (Separation agreement deemed effective in itself to bar the wife from claiming the proceeds).
3. Connecticut Mut. Life Ins. Co. v. Schaefer, 94 U.S. 457 (1876); Overhiser's Adm'x v. Overhiser, 63 Ohio St. 77, 57 N.E. 965 (1900).
4. *E.g.*, Cannon v. Hamilton, 174 Ohio St. 268, 189 N.E.2d 152 (1963); VANCE, INSURANCE § 116 (3d ed. 1951).
5. *E.g.*, Parrish v. Kaska, 204 F.2d 451 (10th Cir. 1953); John Hancock Mut. Life Ins. Co. v. Soluri, 134 F. Supp. 86 (S.D. N.Y. 1955).
6. *E.G.*, O'Brien v. Elder, 250 F.2d 275 (5th Cir. 1957); Aetna Life Ins. Co. v. Bushnell, supra note 2.
7. E.g., Baekgaard v. Carreiro, 237 F.2d 459 (9th Cir. 1956 (Language of the settlement was the determining factor); Thorp v. Randazzo, 41 Cal. Rep. 2d 770, 264 P.2d 38 (1953) (held against the named beneficiary saying that each case should be decided on its particular facts).
8. *Supra* note 7.
9. Roman v. Smith, 228 Ark 833, 314 S.W.2d 225 (1958) (Constructive trust imposed on proceeds of a U.S. savings bond held by the wife; property settlement had given the bond to the husband but the wife was still named beneficiary).
10. Clements v. Neblett, 237 Ark. 340, 372 S.W.2d 816 (1963); Pedron v. Olds, 193 Ark. 1026, 105 S.W.2d 70 (1937).
11. Mabbitt v. Wilkerson, 220 Ark 270, 247 S.W.2d 201 (1952).

wife's interest upon divorce[12] seem to have had the least difficulty with the problem. The Michigan statute,[13] for example, provides that the wife's interest as named beneficiary is terminated upon divorce unless otherwise provided in the divorce decree. The other statutes are not as explicit, but a similar result has been attained by judicial interpretation.[14] With the seemingly increased use and importance of property settlement agreements, such a legislative resolution of the problem before it arises might be the best course for North Dakota to follow. A properly drafted statute could insure certainty of result, and yet be flexible enough to allow the parties to provide otherwise if such would fit their situation.

It is this writer's opinion that the better view is provided by those cases that base their decisions on the particular language of the settlement and on other facts because a flexibility of result can be attained that would otherwise be lacking. In a situation where the wife has specifically waived her interest in the policy, the reasonable conclusion to be drawn is that both she and the insured have intended that this waiver be effective. It should further be recognized that the problem in these cases is not an actual changing of beneficiary, but rather a determination of the right to proceeds. This being so, a provision whereby the beneficiary expressly and specifically waives rights to the proceeds should be given effect and the party should thereafter be foreclosed from claiming any right to such proceeds.

Such a result might be said to effect a change of beneficiary in a mode not generally authorized by the insurer. This should make little difference, however, in that the requirements for changing a beneficiary are intended to protect the insurer against having to pay twice on the death of the insured,[15] and if the insurer need only pay once, as is the case in interpleader actions, he will not be prejudiced.

In light of the seeming absence of case law in North Dakota, we are free to approach this problem unfettered by the stricture of prior decisions. If a case involving similar facts should arise, this decision and others so holding would provide a certain and preferable view to follow in this confused area of the law.

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12. KY. REV. STAT. § 403.060 (1962); MICH. COMP. LAWS § 552.101 (1948); WIS. STAT. ANN. §§ 246.11 & 247.26 (1957).
13. MICH. COMP. LAWS, *supra* note 12 (The insurer is protected by this statute also and is liable for paying according to the terms of the policy only if he pays after receiving notice of the divorce from some interested party).
14. See, *e.g.*, Salisbury v. Vick, 368 S.W.2d 317 (Ct. App. Ky 1963); Spalding v. Williams, 275 Wis. 394, 82 N.W.2d 187 (1957).
15. Mabbitt v. Wilkerson, *supra* note 11; see generally, VANCE, INSURANCE §§ 108-110 (3d ed. 1951).